

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MINNESOTA

3)
4 United States of America,) File No. 15-49
5) (MJD/FLN)
6 Plaintiff,)
7)
8 vs.) Minneapolis, Minnesota
9) April 1, 2016
10 (1) Hamza Naj Ahmed,) 2:08 p.m.
11 (2) Mohamed Abdihamid Farah,)
12 (3) Adnan Abdihamid Farah,)
13 (4) Abdirahman Yasin Daud,)
14 (7) Guled Ali Omar,)
15)
16 Defendant.)
17 -----
18 -----

19 BEFORE THE HONORABLE
20 MICHAEL J. DAVIS
21 UNITED STATES DISTRICT COURT JUDGE
22 **(MOTION HEARING)**

23 APPEARANCES

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13 Proceedings recorded by mechanical stenography;
14 transcript produced by computer.

1 **P R O C E E D I N G S**2 **IN OPEN COURT**

3 THE COURT: All right. Let's call this matter.

4 THE COURTROOM DEPUTY: The United States of

5 America versus Hamza Naj Ahmed, Mohamed Abdihamid Farah,

6 Adnan Abdihamid Farah, Abdirahman Yasin Daud, and Guled Ali

7 Omar; Criminal Case No. 15-CR-49.

8 Counsel, please state your appearances for the
9 record.

10 MR. DOCHERTY: Good afternoon, Your Honor.

11 Assistant U.S. Attorneys John Docherty and Andrew Winter for
12 the United States.

13 MS. MURRAY: JaneAnne Murray for Mr. Ahmed.

14 MR. MOHAMMAD: Murad Mohammad on behalf of Mohamed
15 Farah.16 MR. NWANERI: Good day, Your Honor. Patrick
17 Nwaneri for Mohamed Farah. And with me is Hassan Mohamud.

18 THE COURT: Good afternoon.

19 MR. UDOIBOK: Your Honor, Kenneth Udoibok for
20 Adnan Farah.

21 THE COURT: Good afternoon.

22 MR. NESTOR: Good afternoon, Your Honor. Bruce
23 Nestor for Abdirahman Daud who is present.24 MR. BRUDER: Good afternoon, Your Honor. The name
25 is Glenn Bruder, last name is spelled B-R-U-D-E-R, appearing

1 on behalf of Guled Ali Omar who is seated to my right.

2 THE COURT: Good afternoon. And counsel that are
3 at the other table, please make your --

4 MR. HOPEMAN: Jon Hopeman and Marnie Fearon. We
5 represent Zacharia Abdurahman. I don't think we're really
6 making an appearance but --

7 THE COURT: Okay. I understand. Good afternoon.

8 MR. BIRRELL: Good afternoon, Your Honor. Andy
9 Birrell and Ian Birrell and Paul Dworak. We represent Hanad
10 Musse who is also not here.

11 THE COURT: Good afternoon. All right. There
12 have been a number of motions that are before the Court:
13 The government's motion for inquiry, Docket No. 384;
14 Defendant Guled Omar's motion in limine, Docket 388;
15 Defendant Mohamed Farah's motion to dismiss the motion,
16 Docket No. 389; Defendant Abdirahman Daud's motion for
17 severance, Docket No. 390; Defendant Hamza Ahmed's motion to
18 exclude or for severance, Docket No. 395; and motion to
19 withdraw as counsel for Mohamed Farah, Docket No. 401.
20 We'll do the last one first, the motion to withdraw as
21 counsel.

22 MR. NWANERI: Thank you, Your Honor. Your Honor,
23 with due respect, and in consideration of the Court's time,
24 I rely on my filed documents, so I move the motion as filed.
25 If the Court has any questions for me.

1 THE COURT: All right. And any questions by the
2 government?

3 MR. DOCHERTY: No, Your Honor. No questions. We
4 don't believe that the grounds as stated in the written
5 motion are adequate, however, to justify withdraw of counsel
6 at this stage of these proceedings.

7 THE COURT: Any comments by any of the
8 co-defendant counsel?

9 All right. Let's go into your reasons for wishing
10 to withdraw, sir.

11 MR. NWANERI: With due respect, Your Honor, on
12 March 25, 2016, approximately a week today, the prosecution
13 sent a letter to the joint defense counsel for second
14 defendant Mohamed Farah, and in that letter, the government
15 requested that Hassan Mohamud, which is that I work with --

16 THE COURT: Can you back away from that microphone
17 just a little bit?

18 MR. NWANERI: Back away?

19 THE COURT: Yes.

20 MR. NWANERI: Okay. Thank you. And that he be
21 excluded from the trial team of second defendant Mohamed
22 Farah. Following that letter, Your Honor, a flurry of
23 events engulfed the entire prosecution and defense counsel,
24 including this honorable Court. Your Honor, it is not in
25 doubt that those events essentially detract defense counsel

1 from concentrating solely on the defense of the defendants
2 and it also has created a future of uncertainty in this
3 complex matter. And by that I mean some counsel are now
4 asking do I have to recuse my client or sever my client from
5 joint trial, issues of what do we do in motions in limine,
6 talking about who will be called as a witness or not. And,
7 Your Honor, I have spoken with some of my colleagues, and I
8 also have the benefit of their thoughts. Consequently,
9 after very careful considerations, I have decided to
10 withdraw as co-counsel for Farah.

11 It should be known, Your Honor, that at all times
12 two law firms represent Mr. Farah, my law firm and the law
13 firm of Murad Defense, headed by Mr. Murad Mohammad. So and
14 my proposal of doing this is to stop these distractions in
15 this matter. I hope that by withdrawing, the honorable
16 Court, the parties, the remaining counsel can concentrate on
17 the remaining issues.

18 I must state with all due respect, though, that my
19 withdrawal as co-counsel for Mohamed Farah in no means an
20 agreement with the issues raised by the prosecution in their
21 letter dated March 25, 2016, or by any other person
22 whatsoever. And by that, I also mean that I have seen some
23 affidavits sworn by counsel, and that affidavit is
24 essentially wrong, with due respect, Your Honor, because
25 it's a statement of fact of what a particular witness had.

1 We saw an affidavit to where somebody say my clients told me
2 X, Y, Z and my client's told -- father's father told me X,
3 Y, Z. I don't want to dwell much on that. Everybody knows
4 that this can not be an affidavit sworn to by counsel.

5 So having said that, you know, Your Honor, I
6 respectfully ask the honorable Court to grant my motion to
7 withdraw as co-counsel. I am not leaving Mr. Farah without
8 counsel, Your Honor. My learned friend, Mr. Murad Mohammad,
9 will continue as counsel for Mr. Farah. I've also had
10 discussions with him, and he's okay with it. Thank you,
11 Your Honor.

12 THE COURT: Well, let me ask you this. I never
13 inquire on this until we would start right before trial, who
14 is lead counsel for your client? You say you're co-counsel,
15 but there has to be a lead counsel. Who was the lead
16 counsel?

17 MR. NWANERI: Well, Your Honor, I started with the
18 case and eventually Mr. Murad Mohammad had joined but now
19 that I'm leaving, I don't know whether that is still the
20 case, but otherwise we shared responsibilities, Your Honor.

21 THE COURT: All right. Well, let's -- tell me
22 about how do you share responsibilities?

23 MR. NWANERI: Most of the motions and prior to
24 trial I agree that Mr. Murad Mohammed would be doing it and
25 if this matter would proceed to trial, then we have to

1 review of that arrangement. But drafting of the motions
2 before trial and looking at the discovery is a joint
3 responsibility of both law firms. But coming to court to
4 move and argue those motions, we assigned that
5 responsibility to Mr. Mohammad prior to trial.

6 THE COURT: Dealing with the discovery, you said
7 that that was divided between the two of you?

8 MR. NWANERI: Yes, Your Honor. Because they are
9 quite voluminous and some of them are in language that some
10 of us don't even understand and that is not familiar to my
11 office. So we have some languages like Somali language, we
12 need somebody who is fluent in that language. And Arabic,
13 Mr. Mohammad, because of his position, he knows that, so
14 there's quite a -- we complemented each other in that.

15 THE COURT: Well, I'm having a difficulty
16 understanding how Mr. Mohammad is going to be ready for
17 trial in a month if you've done half the discovery.

18 MR. NWANERI: Pardon, Your Honor? Can I --

19 THE COURT: Well, you've looked at half of the
20 discovery and done your analysis of that. Mr. Mohammad will
21 not have your expertise of that discovery at trial if you
22 are excused from this case and that you were lead counsel in
23 this case.

24 MR. NWANERI: Well, Your Honor, I appreciate what
25 the Court -- the Court's observation, but we -- it's not as

1 if I woke up one morning and said I want to leave the case.
2 But if that would make the entire process to concentrate on
3 the issues before the Court, it is essentially the defense
4 of these young men and make sure that justice is done, I
5 would do that if that would make it work. But, again,
6 this kind of motions are not automatic. They are at the
7 discretion of the honorable courts, and, of course, that's
8 why the rules provide that they have to be in the writing
9 and sent to the Court. So I am open to whatever the Court
10 decides. But I just want this Court to know that the events
11 that happened the last week and essentially 90 percent of
12 them doesn't really dwell on the merits of the matter before
13 you, after due considerations, I have decided to bring the
14 motion to withdraw.

15 THE COURT: All right. Well, let me come back to
16 this motion. Let's move -- thank you, counsel.

17 MR. NWANERI: Thank you, Your Honor.

18 THE COURT: Let's move to Docket No. 384, the
19 government's motion for inquiry. On March 25, 2016, the
20 government notified counsel of record for the defendant
21 Mohamed Farah of its intent to introduce testimony and
22 evidence at trial to which a member of Mohamed Farah's
23 defense team, Sheikh Hassan Jami, is referenced by a
24 co-conspirator apparently preaching by Jihad and related
25 topics. The government filed its motion of inquiry, and now

1 I would like the government to come forth and give a full
2 proffer of what the evidence will be for the government and
3 why this will cause a possible problem.

4 MR. DOCHERTY: Thank you, Your Honor. On
5 March 25, 2016, as the Court has said, we sent a letter to
6 counsel stating that there was evidence from a cooperating
7 defendant that he had been taught the appropriate mode of
8 offering prayer while on a battlefield by a member of the
9 defense team who we know as Sheikh Hassan Jami. I
10 understand that we may have misspelled the last name but I
11 believe the pronunciation is correct.

12 This evidence, Your Honor, was developed in a
13 tape-recording, made consensually, by a confidential human
14 source of the FBI on April the 2nd of 2015. A
15 transcript -- or the audio recording of that was turned over
16 in September of 2015 in discovery. The government went
17 beyond my view of the disclosure rules of Rule 16 and
18 undertook to prepare a transcript, not only of that
19 conversation but of all the conversations which the CHS had
20 tape-recorded. Those transcripts included not just a
21 verbatim of what was said but also some commentary, for
22 example, clearing up ambiguous terms in bracketed notes.
23 These are not, I hasten to add, the transcripts that would
24 be used at trial because of this additional explanatory
25 material would have to be excised out.

1 On March the 2nd the government interviewed a
2 defendant who had agreed to plead guilty and cooperate with
3 the government at the trial of this case. The April 2nd,
4 2015, recording was reviewed, among many other topics, at
5 that March 2nd of 2016 proffer session. It was at that
6 point that the cooperating defendant definitively identified
7 the Sheikh Hassan, who is -- who -- the person who does the
8 teaching is referred to in the recording, and I believe the
9 Court has a transcript, only as Sheikh Hassan. It was at
10 that meeting that the cooperating defendant definitively
11 identified which Sheikh Hassan, namely, the Sheikh Hassan
12 who is provided by Mr. Nwaneri's law firm. Upon receiving
13 the FBI reports of that, the government discussed the matter
14 amongst ourselves and the result was the letter that was
15 sent on March the 25th of 2016.

16 The Court has asked why we believe that this could
17 be a problem. There are a couple of reasons. First of all,
18 we do anticipate that the cooperating defendant would
19 testify about this April 2nd of 2015 conversation which
20 involved not just this cooperating defendant but several
21 other defendants. The context of the conversation indicates
22 that this is preparation --

23 THE COURT: Excuse me. Let's back up.

24 MR. DOCHERTY: Yes.

25 THE COURT: Proffer the other defendants that that

1 conversation would cover.

2 MR. DOCHERTY: Could I consult with Mr. Winter,
3 please? Just for a second. I think I've got most of them,
4 but I want to be sure.

5 (Counsel conferred.)

6 MR. DOCHERTY: Excuse me, Your Honor. I'm just
7 going to check the attachments here.

8 MR. WINTER: One moment, Your Honor.

9 MR. DOCHERTY: Your Honor, I believe that I've got
10 the defendants who were there, but Mr. Winter is going to
11 check with the agent so that we're absolutely sure and don't
12 misstate anything on the record, if that's all right. It
13 will just be one moment.

14 It was the other defendant present, Your Honor,
15 was Guled Ali Omar.

16 And our view of this tape-recorded conversation,
17 when placed in context, is that this was not a discussion of
18 an abstract theological point but rather was part of getting
19 psyched up to go to Syria to join a terrorist organization.
20 If that evidence is introduced, then the defense will be in
21 the position --

22 THE COURT: Let me back you up.

23 MR. DOCHERTY: Yes, sir.

24 THE COURT: That's a conclusion.

25 MR. DOCHERTY: It is.

1 THE COURT: Give me the -- what evidence that
2 you're going to present that comes to that conclusion.

3 MR. DOCHERTY: We would play the tape-recording
4 with the cooperating defendant on the stand, and we would
5 ask the cooperating defendant who was the Sheikh Hassan that
6 he was talking about, and if he was to answer that question,
7 he would identify a member of the defense team.

8 Even if -- and I know that the defense -- several
9 defendants that have suggested that while a solution of this
10 is simply don't allow the cooperating defendant to identify
11 the member of the defense team as the source, in the view of
12 Mr. Winter and myself, that is inadequate, and the reason
13 that it is inadequate is that that means that the defendants
14 could not call the Sheikh Hassan concerned to rebut that
15 testimony if they were under orders from the Court not to
16 identify the source of the theological teaching.

17 So this, I believe, puts, as we've put in our
18 letter to the Court, the potential for prejudice not just to
19 Mohamed Farah but to other defendants, the spillover effect,
20 if you will, onto other defendants. It is something of
21 concern to the government. We raised it with counsel. We
22 copied the Court on our communication to counsel. The Court
23 responded by asking us -- or directing us, excuse me, to
24 file a motion to inquire. We have done so. And, of course,
25 since the motion to inquire was filed, further facts have

1 come to light, particularly in a declaration by a
2 member -- by a defense lawyer for a defendant who has
3 pleaded guilty which has raised a further issue concerning
4 the behavior of the paralegal employed by Mr. Nwaneri.

5 THE COURT: All right. Anything else that you
6 wish to tell the Court?

7 MR. DOCHERTY: Not at this time, Your Honor. I
8 anticipate that as this afternoon's hearings go on, there
9 will be other things that I will want to address, but that
10 is all I have to say for this -- at this juncture.

11 THE COURT: All right. Let's have counsel come
12 forth and state their positions. Ms. Murray.

13 MS. MURRAY: Your Honor, I filed a motion either
14 to exclude the evidence identifying the teacher involved
15 with respect to this issue about how to pray in battlefield
16 or otherwise sever my client from the trial. I propose
17 several remedies. I agree with the government that I
18 believe it would be prejudicial if a cooperating witness
19 takes the stand and points over to the defense table and
20 says that someone at the defense table taught him how to
21 pray in battlefield. I do believe that that would be
22 prejudicial. And I agree with the government it would
23 diminish defense counsel and defendants in the eyes of the
24 jury and compromise our independence and our advocacy to the
25 jury. But I propose that the solutions are either to allow

1 the witness to testify but without identifying who was the
2 teacher. It still is not clear to me why it is necessary to
3 identify the teacher of that particular piece of
4 information. I understand the government's concern that
5 perhaps the defense would want to rebut that evidence by
6 calling Mr. -- by Sheikh Hassan Jami to rebut that evidence,
7 although, again, I'm not sure what Sheikh Hassan Jami's
8 intentions, what it would add in terms of rebuttal.
9 Potentially an independent expert could provide the same
10 rebuttal. But if -- if the evidence can come in without
11 identifying the teacher, then I think we don't have any
12 problem.

13 Or we could ask that if -- if the Court believes
14 that the identity is relevant, then I ask that Sheikh Hassan
15 Jami not be permitted to sit at the defense table. And if
16 Sheikh Hassan Jami is permitted to sit at the table and he
17 will be identified as the teacher in question, then I ask
18 for a severance for Mr. Ahmed.

19 THE COURT: Dealing with the second issue that has
20 arisen by the affidavit of Mr. Hopeman, do you wish to be
21 heard?

22 MS. MURRAY: Not at this moment, Your Honor.

23 THE COURT: Mr. Mohammad.

24 MR. MOHAMMAD: Good afternoon, Your Honor.

25 THE COURT: Counsel, I -- I would prefer, and if

1 you can -- you can overrule me on this issue, but I would
2 prefer that you not respond at this point because there's
3 going to be a combination of issues dealing with the
4 withdrawal of -- possible withdrawal of your co-counsel and
5 I will be asking you a number of questions, and I think that
6 you should wait until that time.

7 MR. MOHAMMAD: I agree with the Court.

8 THE COURT: All right. Good afternoon.

9 MR. UDOIBOK: Good afternoon, Your Honor. Your
10 Honor, I have the misfortune of having to agree with the
11 government in this instance. I usually don't do that. But
12 I believe for the Court to exclude the identity of Sheikh
13 Jami, the jury would not be able to put whatever testimony
14 the cooperating witness would be offering in context and how
15 the information came or why and what is the nature of this
16 person. Nonetheless, for my client being -- my client has
17 some relationship with Mr. Jami because his firm represents
18 my client's brother, and if the jury would be inclined to
19 agree with whatever testimony comes in regarding identity
20 and the nature of the preaching, it could be imputed on my
21 client in a way, I don't know what the testimony would be,
22 but let's assume it is what the government portends it is,
23 that is that battle, it's a battle prayer, in other words,
24 this is how you conduct Jihad and this is how you pray in
25 order to make it effective, it would then mean that somehow

1 my client agrees with that type of notion, idea, philosophy.
2 I don't see in any context that on a motion in limine to
3 partially allow the testimony to come in but then conceal
4 the identity of the proffer. It does not cure the
5 prejudice.

6 THE COURT: Thank you.

7 MR. UDOIBOK: Thank you.

8 MR. NESTOR: Good afternoon, Your Honor.

9 THE COURT: Good afternoon.

10 MR. NESTOR: Good afternoon again. In my written
11 pleading I do not specifically raise any reference to
12 Federal Rule of Criminal Procedure or 403 -- or rule of
13 evidence, I'm sorry, but it does seem to me that there
14 is -- the initial question is whether this matter can just
15 be dealt with by the Court by excluding what the government
16 has sought to proffer in the testimony that it anticipates
17 to offer at trial and that it's not relevant. The
18 government in its presentation today states that this is not
19 an abstract theological concept but part of getting psyched
20 up to go to Syria and join a terrorist organization. And I
21 at least heard the Court inquire as to the fullness of
22 evidence that supports that assessment of the evidence by
23 the government and at least today I did not hear the
24 government respond to the Court's inquiry as to why they
25 believe this is part of getting psyched up to join a

1 terrorist organization as opposed to a theological concept,
2 and there is certainly a basis in the record in the filings
3 that it, at most, was a reference to an abstract theoretical
4 concept.

5 In the transcript of the April 2nd, 2015,
6 recording made by the confidential human source, there was a
7 reference by the human source to actually being present in
8 Mr. -- in Sheikh Hassan's mosque and that all the preachings
9 there were always moderate and against Jihad. He then makes
10 a reference that on occasion Sheikh Hassan would speak after
11 services at other mosques or other areas in the Twin Cities,
12 and that's where he heard these description of what Sheikh
13 Hassan or what counsel for Mr. Farah indicates was more of
14 an abstract theoretical concept. And I believe that
15 actually comes in through the Facebook posting of Sheikh
16 Hassan which the government has introduced as an exhibit to
17 its most recent filing.

18 And so I question that there's anywhere in the
19 government that believes that the confidential -- or that
20 the co-defendant who is recorded on April 2nd indicates that
21 he was taught this by Sheikh Hassan. It appears more that
22 this was merely a part of a discussion where a number of
23 people were present and that it was in a public setting and
24 there was no teacher/student relationship and so I don't
25 understand the necessity for the testimony given the issues

1 that it introduces.

2 Separate from that, though, it having been raised
3 by the government and the press coverage that it has
4 generated, and I -- you know, obviously there are other
5 press issues and publicity issues that will be dealt with in
6 selecting a jury, but the implication of the government's
7 filings is that somehow defense counsel is part of a ongoing
8 conspiracy here, and for that suggestion to have been put
9 out there publically I think requires me on behalf of my
10 client to file a motion for severance from Mr. Mohamed Farah
11 as a defendant and from his current defense team.

12 THE COURT: Thank you.

13 MR. BRUDER: Good afternoon, Your Honor.

14 THE COURT: Good afternoon.

15 MR. BRUDER: To some degree I'm going to echo some
16 of Mr. Nestor's comments. If the only issue before the
17 Court today were Mr. Hassan Jami's comments in this
18 April -- as related in this April 2015 transcript, I think
19 it could easily be addressed through a series of orders in
20 limine, and I'm frankly, as, for the reasons expressed in my
21 memorandum, relatively salient about those statements.

22 Although the government contends they were far more specific
23 than a abstract dialogue, a clear reading of the transcript
24 suggests that that's exactly what it was, an abstract
25 discussion.

1 In addition, when the cooperating defendant spoke
2 to the FBI in March, he characterized Mr. Hassan Jami's
3 message at his mosque of one of moderation and preaching
4 against Jihad. The reason -- I think this could have been
5 handled, frankly, quite significantly more discretely than
6 it has been. But there's nothing we can do about that now.
7 Now we're sitting here with front page articles on the
8 newspaper, and, frankly, I do share the government's concern
9 that Mr. Hassan Jami's continued participation as a member
10 of one of the defendant's defense teams could undermine the
11 credibility of all of the defense counsels in this case.

12 And, frankly, one need go no further than to look
13 at the reader comments on the *Star Tribune* articles that
14 have been appearing in the paper. Those reader comments
15 routinely feature readers demanding to know more about the
16 other defense counsel and exactly what cast of villains is
17 involved in this case. I think that's grossly unfair to me
18 and it's, more importantly, grossly unfair to my client. So
19 the Court I think understandably needs to do something to
20 address that situation.

21 Regardless of what the Court does, it -- there are
22 going to have, from my perspective, there are going to have
23 to be a series of orders in limine because even if defense
24 counsel is allowed to withdraw, if the government is able to
25 put this information in as part of its case in chief, it

1 should not be allowed to identify this speaker himself or to
2 introduce any evidence or any testimony through any witness
3 that that speaker ever had any connection with any of the
4 defendants' counsel or it would re-create the same problem
5 that we face today. So one way or another, there need to be
6 a series of orders in limine to, in essence, contain that
7 contamination.

8 Frankly, Your Honor, my real concern here is less
9 the statements that the government elicited in its proffer
10 than the information that's reflected in the declaration
11 from Mr. Hopeman which would suggest that Mr. Hassan Jami's
12 activities have gone beyond simply abstract theoretical
13 discussions of theology but have attempted to influence
14 defendants other than his firm's own client. And if
15 that -- if the Court, in fact, attaches credibility to that
16 declaration, then I concur with counsel for Adnan Farah with
17 regard to the removal of certainly his defense counsel at
18 this point. That's my position.

19 THE COURT: All right. And do I understand that
20 you're moving for severance also?

21 MR. BRUDER: I didn't actually incorporate that in
22 my motion, but certainly that would be a remedy that the
23 Court could consider, and I would ask the Court to do that
24 under the circumstances if -- well, I mean, I think the
25 Court has a number of options. But let me put it this way.

1 If we're going to go to trial, I don't want my client to be
2 the only one going to trial with Mr. Mohamed Farah.

3 THE COURT: All right. Thank you.

4 MR. BRUDER: Thank you.

5 THE COURT: Mr. Docherty.

6 MR. DOCHERTY: Your Honor, just a couple of
7 points. Ms. Murray inquired as to why it was necessary to
8 identify the speaker. And on a certain level her argument
9 makes sense. But the problem that I see with not
10 identifying the speaker is that it deprives the defense
11 counsel, not all of whom may choose the trial tactic that
12 Ms. Murray is apparently contemplating of calling an expert,
13 but meanwhile to put the speaker on the stand and ask him to
14 rebut or attempt to rebut the implications of the
15 transcript. So even if the government did not give the name
16 and the identity and the affiliation of the speaker before
17 the jury, some defense lawyers might, well, in their own
18 independent professional judgment think that that was what
19 they needed to do and that would be something that they
20 could not do if we had all been ordered not to discuss that
21 matter in front of the jury.

22 The concentration on the bare words of the
23 transcript by Mr. Nestor, by Mr. Bruder ignores the context
24 of this conversation. This is April the 2nd of 2015. The
25 arrests in this case were on April the 19th of 2015, so

1 approximately two weeks and a little bit before two of these
2 defendants went to California in search of fake passports
3 which they could use to cross into Mexico, these young men
4 are sitting around talking about the way in which one prays
5 on a battlefield. The force of the evidence is in the
6 context. I think the words themselves are also important,
7 but the -- the context is critically important and should
8 not be overlooked.

9 And I believe that that is all that I wanted to
10 respond to, unless the Court has any questions.

11 THE COURT: Thank you. The Court will take this
12 matter under advisement.

13 Mr. Mohammad, if you would step forward. Again,
14 good afternoon.

15 MR. MOHAMMAD: Good afternoon.

16 THE COURT: And co-counsel has filed a motion to
17 withdraw from this case, and that has implications upon your
18 client having adequate representation for trial. And I'm
19 going to have to ask you a series of questions that normally
20 I would not have to ask because it's important for the Court
21 to understand what's going on here. Both of -- both you and
22 co-counsel have called yourself co-counsel, and before trial
23 or motions in limine I would have announced that one of you
24 would have to be lead counsel and direct the case. Who
25 would that have been?

1 MR. MOHAMMAD: Judge, that would have been me, and
2 that's essentially why I was brought on to this case, Judge.
3 I was brought on for a variety of reasons, including my
4 Arabic language skills, my background is in Muslim, in
5 addition to some other items I bring to the table, Judge.
6 But the intention of our team was that I would take over as
7 lead counsel at trial, and that was our intention from the
8 very beginning.

9 THE COURT: And when -- when both firms became
10 co-counsel, you became a team to represent one defendant.
11 Would that be accurate?

12 MR. MOHAMMAD: That's accurate, Judge.

13 THE COURT: And were you aware of Sheikh Mohamud
14 Jami being a law clerk in this case?

15 MR. MOHAMMAD: I was, Your Honor.

16 THE COURT: All right. In your declaration, you
17 talk about you cautioned him several times about his duties.

18 MR. MOHAMMAD: That's true, Judge. I'm aware that
19 Mr. Jami shares a unique position of being a law school
20 graduate as well as an imam in a community that's being
21 investigated and implicated here in this case. His insight,
22 Judge, I knew of being valuable. He's one of the most, if
23 not the most, respected member of the Somali community that
24 I as an outsider can identify. It is rare for me to meet a
25 Somali individual who does not know Mr. Hassan Jami and not

1 just know him but like and respect him. So I was aware that
2 many people in his community, through his lectures or his
3 sermons or just by knowing him, would come to him about this
4 case. He's been involved in the law since 2002 when he
5 graduated from William Mitchell. He's taught at the law
6 school, Judge, so he's not somebody that comes here
7 flippantly and without a little weight behind him in terms
8 of the Somali community support.

9 So Judge, I knew that he -- I thought he was an
10 invaluable piece of the team. I thought he was a critical
11 piece of the team. But I also knew that people would come
12 to him and there would be a potential for conflict at some
13 point down the line. And I think both Mr. Nwaneri and I
14 both cautioned him that when -- especially if you've got a
15 family member that has -- a family has two children listed
16 as co-defendants, we're going to have a tough time
17 communicating with that -- with the parents and we have to
18 be careful of what we say because whatever we say may be
19 communicated to co-defendant and that wouldn't be fair to
20 one brother versus the other. And I know that they may have
21 similar or unique intentions of how to proceed to trial or
22 not to proceed to trial, but we have to protect the
23 integrity of our client and our client's case. So that was
24 a discussion that we had several times in the beginning.
25 And I wasn't aware that it was an issue until it was raised

1 as a potential issue by the declaration of one of the
2 co-defendant's.

3 THE COURT: What was Mr. Hassan Mohamud Jami's
4 role as a law clerk in your case?

5 MR. MOHAMMAD: Judge, he had a role of
6 translating, of advising us regarding some of the issues
7 that we see. When there was a discussion about some
8 language issues, religious issues, he would clarify things
9 for us. He gave us valuable insight as to the community
10 structure, how kids interact with each other, why kids went
11 to the mosque to pray, why they went to go learn, what kind
12 of community members he saw. So he was very valuable. And
13 Judge, to lose him in a case like this would be a big blow
14 to anybody.

15 THE COURT: And do you have any knowledge that he
16 had any contact with any co-defendants after you were his
17 counsel?

18 MR. MOHAMMAD: Absolutely none. And, Judge, as I
19 laid out in my declaration, I'm very aware of the rules
20 regarding that, and it was something that was on the
21 forefront of my mind. In fact, I avoided contact with my
22 client's parents for that particular reason.

23 THE COURT: Now, in the preparation for trial, it
24 has been indicated that you split up the discovery aspect,
25 and there's quite a bit of discovery in this case.

1 MR. MOHAMMAD: Judge, when I heard the description
2 of the duties being split, I think there --

3 THE COURT: I'll let you talk. You tell me
4 how -- how you -- because you're the lead counsel, how were
5 you going to try this case? How -- what do you know
6 about -- what was co-counsel going to be helping you with
7 and because I need to know what will be lacking in your
8 defense.

9 MR. MOHAMMAD: Judge, to be fair, both of us, both
10 firms had equal access. We had our own copies of the
11 discovery. We've gone -- I've gone through everything, and
12 I presume that Mr. Nwaneri, based on our conversation, has
13 gone through everything. So we didn't divide the discovery
14 down the middle and give one person half of it and the other
15 person the other half. We both had equal access. We both
16 reviewed the entire lot of discovery. And when there were
17 issues, we would discuss them together with Mr. Hassan Jami,
18 and he would clarify some issues. So I think the
19 characterization of half and half was -- you took it as a
20 quite literal as 50/50 physical division but that wasn't the
21 case. We both had equal access to the documents and the
22 recordings and photos and everything, but we've reviewed
23 them all in their entirety on our own so.

24 THE COURT: Do you feel you're competent to try
25 this case without co-counsel?

1 MR. MOHAMMAD: Competent or confident?

2 THE COURT: Competent and confident.

3 MR. MOHAMMAD: Yes to both, Judge. I will say
4 this. I sought the advice of lawyers that are smarter than
5 me, older than me, wiser than me, and I agree with them that
6 in a case of this nature, even if I feel confident, even
7 though I feel like I'm competent, otherwise I wouldn't be
8 here, I would ask the Court, given the nature of this case
9 and losing a substantial part of the team that I was working
10 closely with, to appoint another lawyer to sit with us and
11 to co-counsel the case with us. Whether I stay on as lead
12 or not doesn't matter, Judge. What matters to me is that my
13 client, Mr. Farah, Mohamed Farah, get the competent
14 representation he needs.

15 THE CLERK: He's retained.

16 THE COURT: I didn't hear you.

17 THE CLERK: He's retained.

18 THE COURT: Go ahead.

19 MR. MOHAMMAD: So, Your Honor, I'd ask the Court
20 to strongly consider appointing new counsel to -- co-counsel
21 to the case to assist.

22 And, Judge, I think, as you've seen here, we've
23 got some tremendous lawyers in this courtroom. And I look
24 around, and they're working with other lawyers that are
25 supporting them, and I don't think that's an unusual thing

1 to request in a case of this. But if I were to proceed on
2 my own, Judge, I would -- I feel confident that we're ready
3 to move forward with it, that I'm well versed in this area,
4 and we can move forward.

5 THE COURT: Will you be ready to go to trial on
6 May 9th?

7 MR. MOHAMMAD: Yes.

8 THE COURT: Have you had an opportunity to discuss
9 this with your client?

10 MR. MOHAMMAD: I have.

11 THE COURT: Have him come forward.

12 Good afternoon.

13 DEFENDANT FARAH: Good afternoon, Your Honor.

14 THE COURT: How are you?

15 DEFENDANT FARAH: Pretty good. Yourself?

16 THE COURT: One of the things I'm trying to do is
17 make sure that you're protected.

18 DEFENDANT FARAH: Yes.

19 THE COURT: And that you have not only confident
20 counsel but competent counsel to represent you in this
21 matter. Do you understand that?

22 DEFENDANT FARAH: Yes, sir, Your Honor.

23 THE COURT: All right. And so have you had an
24 opportunity to talk to both of your attorneys about this
25 matter?

1 DEFENDANT FARAH: Yes, sir, Your Honor.

2 THE COURT: More than 15 minutes or 5 minutes, did
3 you -- did they sit down with you and talk to you about what
4 this means if one of the team leaves the -- your
5 representation?

6 DEFENDANT FARAH: Yes, sir.

7 THE COURT: And are you confident that
8 Mr. Mohammad can represent you in this matter?

9 DEFENDANT FARAH: Yes, sir, Your Honor, fully.

10 THE COURT: You understand that you have a right
11 to have your own counsel and you do.

12 DEFENDANT FARAH: Yes.

13 THE COURT: But I want to make sure that you feel
14 comfortable that you will get the best defense that you
15 think is possible through Mr. Mohammad.

16 DEFENDANT FARAH: I understand that, Your Honor.

17 THE COURT: Are you in agreement with the
18 withdrawal of co-counsel?

19 DEFENDANT FARAH: Yes, sir.

20 THE COURT: Was there some question about that?

21 DEFENDANT FARAH: No. No, Your Honor.

22 THE COURT: And you understand with the withdrawal
23 of co-counsel that Sheikh Hassan Mohamud will not be part of
24 your team?

25 DEFENDANT FARAH: Yes, sir, Your Honor.

1 THE COURT: Counsel, why don't you set the record
2 on what you've talked to him about and make sure that we
3 have a record now and not a year later.

4 MR. MOHAMMAD: Sounds good.

5 THE COURT: All right.

6 **EXAMINATION**

7 BY MR. MOHAMMAD:

8 Q. Mr. Farah, you understand that there's been a lot of
9 things that have happened in the last week, correct?

10 A. Yes, I understand that.

11 Q. And do you understand that at this point now, you are
12 represented by both myself, my firm, and Mr. Nwaneri, and
13 his office and my office is being assisted by Sheikh Hassan
14 Jami. Do you understand that?

15 A. Yes, sir.

16 Q. And do you understand some of the issues that have been
17 raised by the government and by some of your co-defendants
18 and their lawyers. Do you understand those issues?

19 A. Yes, sir.

20 Q. And did we talk about those issues?

21 A. Yes, sir.

22 Q. And you understand the consequences of some of the
23 issues that both the government and the co-defendants have
24 raised?

25 A. Yeah.

1 Q. Yes?

2 A. Yes, sir.

3 Q. Do you understand that a decision has been discussed
4 with you and essentially made by one of your lawyers,
5 Patrick Nwaneri?

6 A. Yes, sir.

7 Q. And he feels it's in your best interest for him to
8 withdraw and, in essence, for Mr. Hassan Jami to no longer
9 assist on your case. Do you understand that?

10 A. Yes, sir.

11 Q. And do you understand that you're losing basically two
12 of the people that are helping you?

13 A. Yes, sir, I understand.

14 Q. And that leaves just me?

15 A. Yeah.

16 Q. For now?

17 A. Yes, sir.

18 Q. And the judge asked you some questions, and these are
19 fair questions to ask, any time you lose one or two people
20 that are helping you and the guy that's still standing, can
21 he help you. Do you understand those questions?

22 A. I understand, yes.

23 Q. And you understand that maybe the judge thinks I'm not
24 ready, maybe the judge thinks I'm not able to handle this
25 case on my own. Do you understand that?

1 A. I have full confidence in you.

2 Q. The judge asked if you had confidence, and you just said
3 you do right now?

4 A. Yes, sir, I have full confidence in Mr. Mohammad's
5 ability to represent me in this case.

6 Q. And you understand that if you wanted another lawyer,
7 you could ask for one right now?

8 A. Yeah.

9 Q. It would create problems for everybody, but that's none
10 of your business and none of your issues. You understand
11 that?

12 A. Yes, sir. I have full confidence in Mr. Mohammad.

13 Q. I appreciate that, but I want to make sure this is not
14 about me.

15 A. Yeah.

16 Q. It's about whether you're getting the representation you
17 deserve.

18 A. I feel like I'm getting adequate defense.

19 Q. Do you want the Court to appoint a new team of people to
20 represent you?

21 A. No, sir.

22 Q. There are a lot of really good lawyers out there.

23 A. No, sir. I've been in here for 11 months, and I feel
24 like you've won my confidence, and there's no reason for me
25 to change your representation of me at this time.

1 Q. Is anybody forcing you to make this decision?

2 A. No, sir.

3 Q. You're making it voluntarily?

4 A. Yes, sir.

5 Q. Do you have any questions for me now?

6 A. No.

7 Q. Any questions for the Court?

8 A. No, sir.

9 THE COURT: Okay. How far have you gone in
10 school?

11 DEFENDANT FARAH: Till high school -- I mean,
12 college.

13 THE COURT: College?

14 DEFENDANT FARAH: Yeah.

15 THE COURT: Okay. And you have never been in
16 trouble before?

17 DEFENDANT FARAH: No, sir.

18 THE COURT: And I know you're nervous.

19 DEFENDANT FARAH: Yeah.

20 THE COURT: I know, let's take a few minutes and
21 take a deep breath here. I'm not going to make a decision
22 right now.

23 DEFENDANT FARAH: Okay.

24 THE COURT: I want you to be able to think about
25 it, because it's like you going into the doctor's office and

1 them saying you have cancer and all of a sudden you don't
2 hear anything of what the doctor is saying, you're just
3 thinking about cancer.

4 DEFENDANT FARAH: Yeah.

5 THE COURT: And I want you to be able to go back
6 and think about your case and the representation that you
7 will be getting and make sure that you, you, are satisfied,
8 not somebody else but you.

9 DEFENDANT FARAH: Yeah.

10 THE COURT: And that you ask your -- Mr. Mohammad
11 the right questions to make sure that he is prepared to
12 adequately defend you. All right?

13 DEFENDANT FARAH: Yes, sir.

14 THE COURT: Because you're way too nervous for me
15 to make any kind of decisions today.

16 DEFENDANT FARAH: No, Your Honor, I feel -- I'm
17 not nervous. I'm just nervous talking, but I understand
18 fully what's going on, and I know what's -- the implication
19 of this, what will happen after this, but I feel confident
20 that Mr. Mohammad's representation of me will be sufficient
21 and adequate to proceed.

22 THE COURT: Okay.

23 DEFENDANT FARAH: Like you don't need me to come
24 back. And I understand, I'm happy with Mr. Mohammad.

25 THE COURT: Are you certain of that?

1 DEFENDANT FARAH: Yes, sir, 100 percent.

2 THE COURT: Is there any other issues that,
3 dealing with this issue, that I should cover that the
4 government believes that the Circuit would want me to cover?

5 MR. DOCHERTY: I don't believe so, Your Honor. I
6 will offer following that if the Court wants to inquire into
7 matters that it believes should not concern the government,
8 we would not object to the Court continuing the inquiry in
9 chambers and we would absent ourselves from that
10 conversation.

11 THE COURT: Okay. All right.

12 MR. DOCHERTY: But I don't believe that there's
13 any other topics that need to be covered.

14 THE COURT: All right. Mr. Farah and
15 Mr. Mohammad, is there any reason we should talk in chambers
16 with my court reporter out of the hearing of all the other
17 people that are here? You have a right to do that. I would
18 have your attorney present and you and my court reporter and
19 everything would be taken down, and you could tell me
20 anything that you want to tell me, and I'll try to answer
21 any questions that you may have that deal with any issues
22 that you are concerned about.

23 DEFENDANT FARAH: No, sir. There's nothing you
24 need to know to that.

25 THE COURT: Okay. And you know that at any point

1 in time you can meet with your attorney or you just send me
2 a letter, if there's some issue that you're concerned about
3 because understand, I have to make sure that you're
4 adequately represented.

5 DEFENDANT FARAH: Yes, sir, Your Honor.

6 THE COURT: You understand that?

7 DEFENDANT FARAH: Yes, sir.

8 THE COURT: And I don't want you to think that
9 you're getting railroaded down off to prison. I want to
10 make sure that you understand everything.

11 DEFENDANT FARAH: Yes, sir.

12 THE COURT: You understand that?

13 DEFENDANT FARAH: Yes, sir, Your Honor.

14 THE COURT: All right. So you can always send me
15 a letter. All the jailhouse lawyers know my address.

16 MR. MOHAMMAD: Judge, if it helps reenforce what
17 you're saying, if I could inquire of my client just to make
18 sure he understands.

19 BY MR. MOHAMMAD:

20 Q. This is not about anybody else other than you right now.

21 A. Yeah.

22 Q. Okay. You don't have to worry about anybody's feelings,
23 about doing what you think the Court wants you to do.

24 A. Yeah.

25 Q. What, you know, the marshal wants you to do, your

1 friends want you to do, what I want you to do, even what
2 your family wants you to do.

3 A. Yeah.

4 Q. This is 100 percent about what you think is best for you
5 and your case, so the judge is offering you an invitation
6 into his private chambers, with a lawyer, to talk to him
7 about any issues that you have regarding your
8 representation, whether you feel bad that you've lost
9 two-thirds of your team, whether you're not confident with
10 me moving forward alone, any of those issues are fair game,
11 okay, and I know the judge is being sincere --

12 A. Yes.

13 Q. -- when he's telling you to come back there and tell him
14 what you need to tell him.

15 A. Yeah.

16 Q. Do you understand that?

17 A. Yes, I do.

18 Q. Don't worry about me, don't worry about anything but
19 you.

20 A. Yeah.

21 Q. Can you do that?

22 A. Yeah.

23 THE COURT: Okay. All right. At this point I'm
24 not going to schedule you to come back here, but I know how
25 it is. You -- you go back and something might come to your

1 mind and I don't want you to be afraid to ask me. You have
2 never been in the system before.

3 DEFENDANT FARAH: Yes, sir.

4 THE COURT: All right. It's not like you've had
5 five convictions and you've gone off to prison a number of
6 times and you've had ten lawyers represent you and you know
7 the criminal justice system better than lawyers that are
8 representing you. It's not the case.

9 DEFENDANT FARAH: Yeah.

10 THE COURT: And so I want to make sure that you
11 understand that this is -- this is not a traffic ticket.
12 It's not juvenile court.

13 DEFENDANT FARAH: Yeah.

14 THE COURT: This is extremely serious matter, and
15 you're, what, 19?

16 DEFENDANT FARAH: 22, Your Honor.

17 THE COURT: Yeah. You're still -- you're still
18 young.

19 DEFENDANT FARAH: Yeah.

20 THE COURT: And so I want to make sure that you
21 understand.

22 DEFENDANT FARAH: Yes, sir.

23 THE COURT: All right.

24 DEFENDANT FARAH: I appreciate that.

25 THE COURT: And so understand -- and Mr. Mohammed

1 will tell you that I'm not just saying this to hear myself
2 talk, it's I need you to feel comfortable and understand
3 what's going on, and if you can't -- if you don't know
4 what's going on, then it's incumbent upon me to make sure
5 that you understand that. Do you understand that?

6 DEFENDANT FARAH: I understand that, Your Honor,
7 yes.

8 THE COURT: All right. You may be seated.

9 DEFENDANT FARAH: Thank you.

10 THE COURT: Anything else, Mr. Mohammad?

11 MR. MOHAMMAD: Judge, you're taking the rest of
12 the matters under advisement, and I'm not sure I have
13 anything to add, unless the Court would like me to add
14 anything on the original issue that the government brought
15 forward.

16 THE COURT: Well, I'm concerned about you
17 have -- you've lost two-thirds of your team and that is --
18 that's a big, big loss, and so I need you to think about it
19 too. I need you to go back and look over the evidence and
20 see whether or not, not that you're not competent to try the
21 case but whether or not you'll be fully prepared to try the
22 case.

23 MR. MOHAMMAD: And Judge, that's a very valid
24 concern that I have losing critical pieces of people that
25 were helping me. That's why I'm asking the Court to

1 consider appointing another lawyer as co-counsel, whether as
2 lead counsel or a second chair, it doesn't matter, but I'd
3 ask the Court to consider doing that. I think that would
4 remedy some of the concerns the Court has about losing a
5 significant portion of the defense team. I know it is late
6 in the game, Judge, and we probably need more time, but I'd
7 rather get it right the first time around.

8 THE COURT: Well, I'll take that under advisement.
9 What I would like you to do is have you meet with the Chief
10 Federal Defender Ms. Roe and because I'm not going to -- I'm
11 not going to be a judge that just throws a lawyer at you and
12 says, guess what, you've got to work together at this level.
13 If there's somebody on the CJA panel that's willing to work
14 or give you a list of two or three lawyers, we can see
15 whether or not we can do that. And I think Ms. Roe is here
16 or is she -- is she here? I'd ask -- is she here?

17 THE COURTROOM DEPUTY: She's not.

18 THE COURT: We'll make contact with her, and you
19 should be in contact with her, and I think that's a good
20 suggestion that we get somebody else on board, and then
21 we'll see where we're at and what we can do.

22 Counsel, if you want to step to the podium. You
23 both stay there.

24 Any other questions that the government believes
25 the Court should ask to make sure there's an appropriate

1 record dealing with this discharge of the lawyer here?

2 MR. DOCHERTY: No, Your Honor. Thank you.

3 THE COURT: Mr. Nwaneri, I sincerely thank you for
4 your candor, and I will grant your motion to be dismissed
5 from this case.

6 MR. NWANERI: Thank you, Your Honor.

7 THE COURT: All right.

8 MR. NWANERI: Thank you.

9 THE COURT: All right. All right,
10 dealing with the other issues, severance, I'll take those
11 under advisement. Any other issues that I have not covered?

12 MR. WINTER: Your Honor, I know it's late in the
13 afternoon. We did --

14 MR. NWANERI: May I be excused?

15 THE COURT: You may be excused.

16 MR. WINTER: -- this morning file a motion for
17 extension on the --

18 THE COURT: Granted.

19 MR. WINTER: Okay. Thank you.

20 THE COURT: Correct.

21 MR. WINTER: And one other matter just briefly. I
22 would ask the Court to consider giving opportunities to the
23 defense counsel, all defense counsel, opportunities to talk
24 to you in chambers if they have issues as to influence such
25 as was laid out in the declarations.

1 THE COURT: Yes, of course.

2 MR. WINTER: Thank you.

3 THE COURT: Counsel and defendants, my chambers
4 are always open to you. If you need to talk to me on the
5 record, anything that is happening on this case, we can have
6 a ex parte, ex parte, for the defendants, that means you'll
7 be in private with your attorney and if you don't even want
8 your attorney there, we would try to figure that out, but
9 your attorney would be present but the government would not
10 be present and it will be recorded, my court reporter will
11 be taking down everything. You have that opportunity and
12 your lawyers can't keep you from asking for that.

13 Anything else for the government?

14 MR. DOCHERTY: Nothing further for the government,
15 Your Honor.

16 THE COURT: Ms. Murray, anything further?

17 MS. MURRAY: Nothing further from me, Your Honor.

18 THE COURT: All right. Mr. Mohammad.

19 MR. MOHAMMAD: Nothing further, Your Honor.

20 THE COURT: Mr. Udoibok.

21 MR. UDOIBOK: Nothing further, other than what I
22 had intimated already.

23 THE COURT: Mr. Nestor.

24 MR. NESTOR: Nothing further, Your Honor.

25 THE COURT: Mr. Bruder, spelled B-R-U-D-E-R.

